

# United States District Court, Northern District of Illinois

|   |                            |   |          |
|---|----------------------------|---|----------|
| Name of Assigned Judge<br>or Magistrate Judge | Milton I. Shadur           | Sitting Judge if Other<br>than Assigned Judge |          |
| CASE NUMBER                                   | 03 C 12                    | DATE  | 1/3/2003 |
| CASE<br>TITLE                                 | USA vs. Jacobo Leyva-Bueno |   |          |

[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

## MOTION:

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## DOCKET ENTRY:

|      |                                     |   |
|------|-------------------------------------|---|
| (1)  | <input type="checkbox"/>            | Filed motion of [ use listing in "Motion" box above.]   |
| (2)  | <input type="checkbox"/>            | Brief in support of motion due _____.   |
| (3)  | <input type="checkbox"/>            | Answer brief to motion due _____. Reply to answer brief due _____.  |
| (4)  | <input type="checkbox"/>            | Ruling/Hearing on _____ set for _____ at _____.   |
| (5)  | <input type="checkbox"/>            | Status hearing[held/continued to] [set for/re-set for] on _____ set for _____ at _____.   |
| (6)  | <input type="checkbox"/>            | Pretrial conference[held/continued to] [set for/re-set for] on _____ set for _____ at _____.  |
| (7)  | <input type="checkbox"/>            | Trial[set for/re-set for] on _____ at _____.  |
| (8)  | <input type="checkbox"/>            | [Bench/Jury trial] [Hearing] held/continued to _____ at _____.  |
| (9)  | <input type="checkbox"/>            | This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]<br><input type="checkbox"/> FRCP4(m) <input type="checkbox"/> Local Rule 41.1 <input type="checkbox"/> FRCP41(a)(1) <input type="checkbox"/> FRCP41(a)(2).  |
| (10) | <input checked="" type="checkbox"/> | [Other docket entry] Enter Memorandum Opinion and Order. Accordingly "it plainly appears from the face of the motion and any annexed exhibits and the prior proceedings in the case that the movant is not entitled to relief in the district court" (Rule 4(b) of the Rules Governing Section 2255 Proceedings for the United States District Courts). That compels the summary dismissal of the motion (id.), and this Court so orders. (1-1) |
| (11) | <input checked="" type="checkbox"/> | [For further detail see order attached to the original minute order.]   |

|  |                                   |   |                                     |
|--|-----------------------------------|---|-------------------------------------|
| No notices required, advised in open court.                    |                                   | number of notices                               | <b>Document<br/>Number</b><br><br>2 |
| No notices required.   |                                   | JAN 07 2003<br>date docketed                    |                                     |
| Notices mailed by judge's staff.                               |                                   | <br>docketing deputy initials                   |                                     |
| Notified counsel by telephone.                                 |                                   | date mailed notice                              |                                     |
| <input checked="" type="checkbox"/> Docketing to mail notices. |                                   | mailing deputy initials                         |                                     |
| <input checked="" type="checkbox"/> Mail AO 450 form.          |                                   |   |                                     |
| Copy to judge/magistrate judge.                                |                                   |   |                                     |
| SN   | courtroom<br>deputy's<br>initials | Date/time received in<br>central Clerk's Office |                                     |

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

|                           |   |                   |
|---------------------------|---|-------------------|
| UNITED STATES OF AMERICA, | ) |                   |
|                           | ) |                   |
| Plaintiff,                | ) |                   |
|                           | ) |                   |
| v.                        | ) | No. 03 C 00012    |
|                           | ) | (No. 00 CR 781-3) |
| JACOBO LEYVA-BUENO        | ) |                   |
|                           | ) |                   |
| Defendant.                | ) |                   |

**DOCKETED**  
JAN 07 2003

MEMORANDUM ORDER AND OPINION

Jose Leyva-Bueno ("Leyva"), acting through new counsel, has just filed a document captioned "Motion To Vacate or Set Aside Sentence by A Person in Federal Custody," seeking to invoke 28 U.S.C. § 2255 ("Section 2255"). But because the motion on its face, together with the underlying documents from Leyva's criminal case, clearly confirm that the current motion has been filed beyond the statutory time limit, the motion is denied at the outset.

After he entered a March 30, 2001 guilty plea to Count Four of a three-defendant four-count indictment, Leyva was sentenced on June 28, 2001.<sup>1</sup> Over and above the fact that this Court distinctly recalls the meticulousness with which it conducted its Fed. R. Cr. B. 11 interrogation of Leyva to confirm that it was both knowing and voluntary (the latter issue is what is sought to be challenged by the current motion), Leyva's difficulty here is

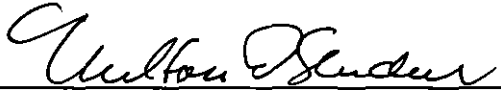
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<sup>1</sup> Both of those dates are confirmed in the Background section of Leyva's current motion.

*J*

that well over a year has therefore elapsed since his conviction became final. Under Section 2255 that kind of interval serves as a time bar to the motion.

Accordingly "it plainly appears from the face of the motion and any annexed exhibits and the prior proceedings in the case that the movant is not entitled to relief in the district court" (Rule 4(b) of the Rules Governing Section 2255 Proceedings for the United States District Courts). That compels the summary dismissal of the motion (id.), and this Court so orders.

  
\_\_\_\_\_  
Milton I. Shadur  
Senior United States District Judge

January 3, 2003